

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOLYNN W.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C23-5602-BAT

**ORDER REVERSING THE
COMMISSIONER'S FINAL DECISION**

Plaintiff appeals the ALJ's decision finding her not disabled. She contends the ALJ erroneously discounted the medical opinions of two state agency consultants and consequently incorrectly assessed she could perform light work instead of sedentary work. Dkt. 9. The Court agrees and **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff was born in 1976, has at least a high school education, and has past work as an account information clerk, administrative clerk, travel clerk, and security guard. Tr. 31. Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on December 9, 2019, alleging disability beginning August 30, 2019. Tr. 225. The claims were denied initially and on reconsideration, and Plaintiff requested a hearing. Tr. 131-32. After the

1 ALJ conducted a hearing on May 31, 2022, the ALJ issued a decision finding Plaintiff not
2 disabled. Tr. 12-39.

3 Utilizing the five-step disability evaluation process,¹ the ALJ found Plaintiff has the
4 residual functional capacity (“RFC”) to perform light work, with the following limitations:

5 She can lift and/or carry 10 pounds occasionally and frequently; must be provided
6 a sit/stand at will option at work; cannot perform overhead reaching; can
7 frequently reach at or below shoulder level; can frequently perform handling and
8 fingering; can occasionally stoop; cannot crouch, crawl, kneel, or climb; is able to
9 remember, understand, and carry out simple and routine instructions and tasks
consistent with the learning and training requirements of SVP level one and two
jobs; can have no contact with the public; is capable of working in proximity to
but not in coordination with co-workers; and can have occasional contact with
supervisors.

10 The ALJ found Plaintiff not disabled because there are jobs that exist in significant
11 numbers in the national economy she can perform. Tr. 32-33. The Appeals Council declined
12 review, making the ALJ’s decision the Commissioner’s final decision. Tr. 1-6.

13 DISCUSSION

14 The Court will reverse the ALJ’s decision only if it is not supported by substantial
15 evidence or if the ALJ applied the wrong legal standard. *Molina v. Astrue*, 674 F.3d 1104, 1115
16 (9th Cir. 2012) (cited sources omitted). The Court may not reverse the ALJ’s decision if an error
17 is harmless. *Id.* at 1111. The applicable regulations require the ALJ to articulate the
18 persuasiveness of each medical opinion, specifically with respect to whether the opinions are
19 supported and consistent with the record. 20 C.F.R. §§ 404.1520c(a)-(c), 416.920c(a)-(c). An
20 ALJ’s consistency and supportability findings must be supported by substantial evidence. *See*
21 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). Substantial evidence is “such relevant
22 evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v.*

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¹ 20 C.F.R. §§ 404.1520, 416.920.

1 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d 747, 750
2 (9th Cir. 1989). When the evidence is susceptible to more than one rational interpretation, the
3 Court must uphold the Commissioner’s conclusion. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th
4 Cir. 2002).

5 The ALJ reviewed opinions from state agency medical consultants Mark Magdaleno,
6 M.D., and Norman Staley, M.D., and found them “somewhat persuasive” as to limitations
7 resulting from Plaintiff’s impairments and effects of pain. Tr. 27. But the ALJ found other
8 assessed limitations unsupported and inconsistent with the record. Specifically, the ALJ
9 determined limiting Plaintiff to light work with decreased lifting and carrying and a sit/stand
10 option was more consistent with Plaintiff’s normal gait and negative straight leg raise tests, as
11 well as her activities, specifically, walking a mile, running, and rock climbing. *Id.*

12 Plaintiff contends the ALJ erred because: (1) the ALJ generalized Plaintiff had normal
13 gait and negative straight leg raise but ignored numerous examples of abnormal gait and positive
14 straight leg raise tests throughout the record; and (2) the ALJ found Plaintiff’s activities of daily
15 living inconsistent with the opined limitations, but the activities were misevaluated and are
16 consistent with limiting Plaintiff to sedentary work. Dkt. 9 at 5-6.

17 As a preliminary matter, Plaintiff mistakenly contends the agency consultants found she
18 can only meet sedentary work requirements; the record shows the consultants made specific
19 findings as to limitations in various categories without making an overall determination on her
20 physical exertion capabilities. Tr. 75-106. Nonetheless, the consultants opined Plaintiff could
21 stand and/or walk (with normal breaks) for a total of two hours and sit (with normal breaks) for a
22 total of around six hours in an eight-hour workday. Tr. 81, 91, 100, 106. The ALJ
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1 accommodated most of the limitations the consultants assessed but found Plaintiff had greater
2 ability to stand and/or walk during the workday than the consultants assessed.

3 However, as Plaintiff argues, there are numerous examples of positive straight leg raise
4 and abnormal gait clinical findings the ALJ failed to consider: (1) in November 2017, “straight
5 leg raise (+) on the right for numbness and tingling at 50 degrees in the glute and hamstrings;”
6 (2) in March 2018, “straight leg raise: positive on the right at 70% for low back pain;” (3) in May
7 2018, “straight leg raise: positive on the right at 60 degrees with pain in the low back and
8 numbness in her right ankle and foot;” (4) in early July 2018, “ambulated with slow gait to room
9 12;” (5) in late July 2018, “straight leg raise: positive on the right at 60 degrees with pain in the
10 low back and into the right glute as well as numbness in her right ankle and foot, positive on the
11 left at 55 degrees for low back pain and pain into the right glute and right foot numbness;” (6) in
12 March 2019, “straight leg raising sign is equivocal;” (7) in October 2019, “positive straight leg
13 raise on the right;” (8) in November 2019, “straight leg raise positive on the RLE, R hip range of
14 motion limited by pain;” (9) in February 2020, “bilateral straight leg raise positive, right worse
15 than left;” and (10) in July 2020, over the course of one hour total time spent walking, Plaintiff
16 “was able to demonstrate walking with a gait that became mildly antalgic over the duration of
17 testing.” Tr. 2377, 2446, 2510, 2526, 2566, 2722, 2742, 2750, 2755, 3114. Substantial evidence
18 thus does not support the ALJ’s finding that the medical record is inconsistent with the
19 consultants’ opinions.

20 The ALJ also found Plaintiff’s activities, specifically, walking a mile, running, and rock
21 climbing, inconsistent with limiting Plaintiff to sedentary work. But none of these activities
22 show Plaintiff has greater standing and/or walking abilities than assessed. There is nothing
23 inconsistent with Plaintiff walking a mile and limiting her to sedentary work. That is, someone

1 walking their dog no more than one mile a day, with occasional breaks, is consistent with
2 sedentary work. The regulations for sedentary work do not require that a person cannot walk.
3 Rather, the regulations state “although a sedentary job is defined as one which involves sitting, a
4 certain amount of walking and standing is often necessary in carrying out job duties.” 20 C.F.R.
5 §§ 404.1567(a), 416.967(a).

6 The Commissioner contends Plaintiff’s argument is insufficient because she does not cite
7 to any evidence that she walked at a pace of two miles per hour or that such a speed is below
8 normal walking speed. Dkt. 15 at 5-6. While the Commissioner is correct about Plaintiff
9 asserting a pace that is not reflected in the record, the record still shows she “walks her dog 1 mi
10 per day, [and] sometimes has to stop her walk short.” Tr. 920. And walking a maximum of one
11 mile a day, with no time frame and the need to frequently rest, is consistent with sedentary work
12 requirements.

13 As to Plaintiff’s other activities, the ALJ relies on one instance of Plaintiff getting injured
14 while “climbing on some rocks” and another instance when she was injured “running on a rock
15 beach.” Tr. 841, 896. The Commissioner argues “these activities support the inference that
16 despite claiming debilitating back pain, Plaintiff had the capacity to run and climb. *Molina v.*
17 *Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (An ALJ may draw reasonable inferences from
18 evidence of activities that contradict claims of a debilitating impairment).” Dkt. 15 at 6. In
19 *Molina*, the ALJ found Plaintiff’s claims of being incapable of being around people without
20 debilitating panic attacks were undermined by her activities, including taking her grandkids to
21 and from school, attending church, shopping, and going on walks. *Id.* The Court affirmed the
22 ALJ because these activities involved human interaction analogous to her past relevant work. *Id.*
23 But here, neither activity includes information in the record about the frequency or length with

1 which Plaintiff was rock climbing or running. And Plaintiff was injured during both cited
2 examples, which indicates that she is unable to do those activities at a level analogous to her
3 ability to work.

4 For these reasons, the Court finds substantial evidence does not support the ALJ's
5 reasons for rejecting the limitations opined by the challenged opinions.

6 **CONCLUSION**

7 For the foregoing reasons, the Commissioner's decision is **REVERSED** and this case is
8 **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).
9 On remand, the ALJ shall reevaluate the opinions of Dr. Magdaleno and Dr. Staley, develop the
10 record and redetermine RFC as needed, and proceed to the remaining steps of the disability
11 evaluation process as appropriate.

12 DATED this 26th day of December, 2023.

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16 BRIAN A. TSUCHIDA
17 United States Magistrate Judge
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